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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (S) No. 6669 of 2006

Petitioner

Gani Mohammad, Age about 62 years, S/o Late Shri Noor Mohammad, Assistant Teacher, P.S. Kamnar, Balaji Ward, Jain Mandir Road, near Oswal Bhawan, Jagdalpur, Distt. – Bastar (C.G.)

Versus

Respondents

1. State Government of Chhattisgarh, Through :- Secretary, Tribal Welfare Department & Education Department, D.K.S. Bhawan, Raipur (C.G.)
2. Joint Director (Treasury and Pension), Jagdalpur, Distt. – Bastar (C.G.)
3. Block Education Officer, Tribal Welfare Department Darbha, District – Bastar (C.G.)
4. Sahayak Pariyojna Prashasak, Akikrit Adiwasi Vikas Pariyojna, Jagdalpur, District – Bastar (C.G.)

**WRIT PETITION UNDER ARTICLES 226 OF THE
CONSTITUTION OF INDIA**

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Shri Ajay Shrivastava, Advocate for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the respondents.

ORDER

(Passed on this 23rd day of April, 2007)

1. By this petition, the petitioner has prayed for a suitable writ or direction to quash the order dated 31.8.2006 (Annexure P/3), passed by the respondent No.2, directing for recovery of a sum of Rs. 33,780/-, from the retiral dues of the petitioner, because this amount was wrongly paid to the petitioner owing to incorrect fixation of salary.
2. The brief facts, in nutshell, are that the petitioner was working on the post of Assistant Teacher. The salary of the petitioner was revised,

time to time and he was granted benefit of Kramonnati, pursuant to the order dated 5.1.2001 (Annexure P/1). The petitioner was retired from service on attaining the age of superannuation. When the case of the petitioner was sent for pension to the respondent No.2, the respondent No.2 raised an objection vide order dated 20.7.2006 (Annexure P/2) with regard to the fixation of salary of the petitioner to the effect that the petitioner was not entitled to the Krimonnati in the pay scale of Rs. 5500-9000/-. Accordingly, the case of the petitioner was examined and owing to incorrect fixation of pay, the aforesaid recovery was directed from the retiral dues of the petitioner.

3. Learned counsel appearing for the petitioner submits that there is no fault on the part of the petitioner, as the petitioner was getting the salary, as fixed from time to time, by the respondents. The respondents cannot recover the amount, if any, from the retiral dues of the petitioner, without affording an opportunity of hearing to the petitioner. The respondents have also not proved that the excess payment was made after giving any opportunity of hearing to the petitioner. To substantiate his submissions, learned counsel appearing for the petitioner cited a decision of this Court in the case of Vidya Shankar Tiwari Vs. State of M.P. (Now State of Chhattisgarh) and others, reported in 2006 (2) M.P.H.T. 31 (CG).
4. In the case of Vidya Shankar Tiwari (Supra), after a period of four years from the date of fixation of salary of the petitioner, he was directed to deposit the excess amount. This Court held that for the mistake of the respondent/employer, the petitioner could not be penalized without following principles of natural justice. Before asking the petitioner for making refund of extra payment, no opportunity of hearing was afforded to the petitioner. The petitioner

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had adjusted himself to the facts of the case and had utilized the money what was legally and duly paid to him. No opportunity of hearing was given to the petitioner before the impugned order was passed and as such the same is unreasonable, arbitrary and deserves to be quashed.

5. In view of the foregoing, this petition is allowed. The impugned order dated 31.8.2006 (Annexure P/3) is quashed, so far as it relates to recovery of Rs. 33,780/- from the retiral dues of the petitioner. No order as to costs.

Thakur

Sd/-
Satish K. Agnihotri
Judge